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8	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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11	In the Metter of the Acquestion Against.	Case No. 2013-15-1
12	In the Matter of the Accusation Against:	Case No.
13	KATHARINE ANNE STARKUS 1294 Terra Nova Blvd.	
14	Pacifica, CA 94044	ACCUSATION
15	Registered Nurse License No. 734697 Public Health Nurse Certificate No. 74201	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
22	Consumer Affairs.	
23	2. On or about August 15, 2008, the Board of Registered Nursing issued Registered	
24	Nurse License Number 734697 to Katharine Anne Starkus ("Respondent"). The Registered	
25	Nurse License expired on April 30, 2012, and has not been renewed.	
26	3. On or about October 1, 2008, the Board of Registered Nursing issued Public Health	
27	Nurse Certificate Number 74201 to Respondent. The Public Health Nurse Certificate expired on	
28	April 30, 2012, and has not been renewed.	

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JURISDICTION

- 4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.
- 5. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.
 - 7. Section 2770.11 of the Code states:
- "(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.
- "(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding."

DISCIPLINARY STATUTES

8. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

9. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."
 - 10. Health and Safety Code section 11173 provides:
- "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud,

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deceit, misrepresentation, or subterfuge; or (b) by concealment of a material fact."

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES /DANGEROUS DRUGS

- 12. Code section 4021 states:
- "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
 - 13. Code section 4022 states:
 - "Dangerous drug" or "dangerous device" means any drug or device unsafe for selfuse in humans or animals, and includes the following:
 - (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
 - (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ------," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
 - (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.
 - 14. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052...".

15. Oxycodone ("Oxycontin") is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Code section 4022. It is prescribed for the management of moderate to severe chronic pain.

Oxycontin can produce drug dependence and has a high potential for being abused. Tolerance,

psychological and physical dependence may develop upon repeated use.

16. Morphine Sulfate ("Morphine") is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L), and a dangerous drug pursuant to Code section 4022. It is prescribed for the management of moderate to severe chronic pain. Morphine can produce drug dependence and has a high potential for being abused. Tolerance, psychological and physical dependence may develop upon repeated use.

STATEMENT OF FACTS

- 17. In 2011, Respondent was employed as a registered nurse at Kaiser Permanente Hospital in San Francisco, California. On or about November 2, 2011, Respondent self-referred and requested acceptance into the Board's MAXIMUS Diversion Program based on her using Oxycontin, which she admitted diverting from her workplace during the previous five to six months. Respondent was accepted into the Diversion Program on or about November 5, 2011.
- 18. On or about November 9, 2011, and December 15, 2011, Respondent failed to call in for drug testing. On November 28 and December 11, 2011, and February 2, 2012, she failed to appear for required drug testing. Respondent tested positive for having used Morphine on December 1, 2011, and tested positive for having used Oxycontin on December 5, 2011.
- 19. Respondent was required to complete a 28 day residential drug treatment program, from which she was discharged on January 23, 2012. Subsequently, she failed to comply with the requirements of the day treatment program by missing treatment group and 12-step meetings.
- 20. On or about February 8, 2012, Respondent was terminated from the Diversion Program as a public safety risk.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Diversion of Controlled Substances)

21. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in Code section 2762, subdivision (a), section 4060, and pursuant to Health and Safety Code section 11173, subdivision (a), as she diverted Oxycontin from her employer for a period of six (6) months in 2011. The facts in support of this cause for discipline are set forth above in paragraph 17.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Controlled/Dangerous Substances)

22. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in Code section 2762, subdivision (b), in that without a physician or other health care provider's authorization she used the controlled substances Morphine and Oxycontin. The facts in support of this cause for discipline are set forth above in paragraphs 17 and 18.

THIRD CAUSE FOR DISCIPLINE

(Termination From The Board's Diversion Program As A Public Safety Risk)

23. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), for unprofessional conduct as defined in Code section 2770.11, subdivisions (a) and (b), as a result of being terminated from the Board's Diversion Program on or about February 8, 2012, as a public safety risk. The facts in support of this cause for discipline are set forth above in paragraphs 17 through 20.

FOURTH CAUSE FOR DISCIPLINE

(Criminal Conviction)

- 24. Respondent is subject to disciplinary action under Code section 2761, subdivisions

 (a), and (f) for unprofessional conduct as defined in Code section 2762, subdivision (c), based on her criminal conviction for driving under the influence of alcohol. The facts in support of this cause for discipline are as follows:
- a. On or about January 18, 2007, Respondent pled no contest to violation of Hawaii Revised Statute 291C-49 [operating a vehicle under the influence of an intoxicant], a misdemeanor, in the criminal matter of *District Court of the First Judicial Circuit, State of Hawaii v. Katherine Anne Starkus.* Respondent was ordered to attend and complete an alcohol assessment and treatment program and pay court imposed fines.
- b. The facts and circumstances in support of this plea are that on or about December 19, 2006, Respondent was stopped for weaving in-and-out of a traffic lane in Honolulu, Hawaii. When contacted by the arresting officer, she displayed objective signs of alcohol intoxication.

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1	Respondent failed field sobriety testing and had a breath alcohol level of 0.11%.		
2	<u>PRAYER</u>		
3	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged		
4	and that following the hearing, the Board of Registered Nursing issue a decision:		
5	1. Revoking or suspending Registered Nurse License Number 734697, issued to		
6	Katharine Anne Starkus;		
7	2. Revoking or suspending Public Health Nurse Certificate Number 74201, issued to		
8	Katharine Anne Starkus;		
9	3. Ordering Katharine Anne Starkus to pay the Board of Registered Nursing the		
10	reasonable costs of the investigation and enforcement of this case, pursuant to Business and		
11	Professions Code section 125.3; and		
12	4. Taking such other and further action as deemed necessary and proper.		
13	Sentenches C 2012 Star of Press		
14	DATED: September 5, 2012 Hourse R. BAILEY, M.ED., RN		
15	Executive Officer Board of Registered Nursing Department of Consumer Affairs State of California		
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